

INTERNAL REVENUE SERVICE

July 27, 2000

Number: **INFO 2000-0205**

Release Date: 9/30/2000

Index No. 104.01-00

The Honorable [REDACTED]  
Member, U.S. House of  
Representatives  
[REDACTED]

Attention: [REDACTED]

Dear Congressman [REDACTED]:

This letter is in response to your inquiry dated April 26, 2000, on behalf of your constituent, Mr. [REDACTED], of [REDACTED]. Mr. [REDACTED] asked whether certain payments made to survivors of military and civilian personnel mistakenly shot down over Iraq are taxable income to the recipients.

On April 14, 1994, United States F-15 fighter aircraft mistakenly shot down two United States UH-60 Black Hawk helicopters over the no-fly zone in Iraq. The 15 Americans aboard the helicopter, all of whom were employed by the United States, were killed in the incident.

After the incident, Congress enacted § 601 of P.L. 106-113, 113 Stat. 1501 (1999) which states, "The Secretary of the Treasury shall pay, out of funds not otherwise appropriated, \$100,000 to the survivor, or collectively the survivors, of each of the 14 members of the Armed Forces and the one United States civilian Federal employee who were killed on April 14, 1994, when United States F-15 fighter aircraft mistakenly shot down two UH-60 Black Hawk helicopters over Iraq."

The following Code sections and regulations apply to this situation:

- Section 61(a) of the Internal Revenue Code (the Code) provides the general rule that, except as otherwise provided by law, gross income includes all income from whatever source derived.
- Section 104(a)(1) states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under § 213 (relating to medical,

- etc. expenses) for any prior taxable year, gross income does not include—  
(1) Amounts received under workmen's compensation acts as compensation for personal injuries or sickness . . . .”
- Section 1.104-1(b) of the Income Tax Regulations provides that § 104(a)(1) excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, § 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Whether a recipient can exclude benefit payments under § 104(a)(1) depends upon the nature of the statute and not the particular circumstances of the recipient. In addition, benefits are excludable where the statute only allows disability payments for on-the-job injuries or sickness.

- Section 3121(a)(14) of the Code provides that, for purposes of the Federal Insurance Contributions Act (FICA), the term “wages” does not include any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died.

Section 601 of P.L. 106-113 applies only to the survivors of 15 federal employees all of whom suffered personal injuries in the course of employment. In addition, the amount of the benefit is not determined by reference to the age, length of service, or prior contributions of the employees. Accordingly, § 601 of P.L. 106-113 is a statute in the nature of a workmen's compensation act under § 1.104-1(b) of the regulations. Benefits received by the survivors of the deceased employees under § 601 are excludable from the survivors' gross incomes and are not wages for FICA tax purposes.

I hope this information is helpful. Please call [REDACTED], Identification Number [REDACTED], at (202) 622-4920, if you have any further questions.

Sincerely,

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Lewis J. Fernandez  
Deputy Associate Chief Counsel  
(Income Tax & Accounting)